

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF3816
)	EEOC NO.: 21BA92201
CORNELIUS REDMOND)	ALS NO.: 09-0673
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Cornelius Redmond's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF3816; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner filed a charge of discrimination with the Respondent on May 18, 2009. The Petitioner alleged in his charge that the American Food Skyline ("American"), denied him overtime on December 11, 2008 (Count A) and discharged him on March 18, 2009 (Count B) because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On November 16, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On November 21, 2009, the Petitioner filed a timely Request.
2. American hired the Petitioner as a Meat Packer on August 21, 2007.
3. The Petitioner alleged in his charge that on December 11, 2008, American denied him overtime because of his race, and that on March 18, 2009, American discharged him because of his race.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. American contends that it is not subject to the Respondent's jurisdiction because it did not employ the requisite number of employees at all relevant times, as defined by Section 5/2-101(B)(1)(a) of the Act.
5. 775 ILCS § 5/2-101(B)(1)(a) provides that an ... "employer is [a]ny person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation."
6. The Respondent determined that from January 1, 2008, through March 31, 2008, American employed 14 employees²; that from April 1, 2008, through June 30, 2008, American employed 16 employees, and from July 1, 2008, through March 31, 2009, American employed between 12 and 14 employees.
7. The Respondent determined that American was not an "employer" as defined by the Act because American had not employed 15 or more employees during the relevant 20-week period enunciated in Section 5/2-101(B)(1)(a), and the Petitioner's charge did not allege either disability discrimination or sexual harassment.³ Therefore, the Respondent dismissed the Petitioner's charge for lack of jurisdiction.
8. In his Request, the Petitioner submits evidence as to the substantive allegations of his charge, however, the Petitioner does not address the jurisdictional issue.
9. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of jurisdiction.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of jurisdiction.

The Commission finds no error in the Respondent's determination that American did not employ the requisite number of employees during the relevant time period. The Commission makes no determination as to the merits of the Petitioner's substantive allegations. Rather, the Commission determines only that the Petitioner cannot pursue his claim under the Act against American because American is not an "employer" as defined by Section 2-101(B)(1)(a) of the Act. Therefore, the Respondent lacks jurisdiction to investigate the Petitioner's charge.

² All of these employee counts include the Petitioner.

³ An exception to the 15-employee rule arises when the charge alleges sexual harassment, or physical or mental disability discrimination, in which case the employer need only have employed one or more employees in order to fall within the purview of the Act and the jurisdiction of the Illinois Department of Human Rights. *See 775 ILCS § 5/2-101(B)(1)(b).*

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and American Food Skyline, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 26th day of May 2010.

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen